

REMARKS

This amendment is in response to the Office Action of December 30, 2003, which rejected pending claims 1-5 as being unpatentable under 35 U.S.C. 103 over U.S. Patent No. 6,071,281 to Burnside in view of U.S. Patent No. 5,855,590 Malecki. The Office Action states that Burnside expressly or inherently has all the limitations of the pending claims except for portions of the jaws being parallel through a range of clamping spacing. For that feature, the rejection relies on the Malecki '590 patent to provide a clamping device with jaws that are parallel through a range of tissue clamping spacing.

In response to the Office Action, the claims have been amended to point out more specifically features not disclosed or suggested by the cited patents, either alone or in combination. Amended claim 1, for example, is directed to a device for clamping and ablating cardiac tissue comprising first and second handle members, and first and second jaw members associated with the first and second handle members, respectively. The jaws are moveable by the handle members between a first open position and a second clamped position in which the jaws are substantially parallel. At least portions of the jaws are parallel through a range of clamping spacing. A first elongated electrode extends along the portion of the first jaw member and a second elongated electrode extends along the portion of the second jaw member. The first elongated

electrode has a width and the portion of the first jaw member includes a clamping surface having a width greater than the first electrode. A portion of the clamping surface is located on each side of the first electrode. The second elongated electrode and the second jaw member have comparable requirements. The electrodes are in face-to-face relationship and are adapted to be connected to an RF energy source so that when activated the first and second electrodes are of opposite polarity.

Independent claim 2 has been amended to make clear that each elongated electrodes has a width less than the width of the respective clamping surface and is flanked by the respective clamping surface.

Dependent claims 6 and 7 has been added to specify that each electrode is generally centrally located relative to the width of the respective clamping surface.

These features may be seen, for example, in Figures 1-6, Figures 30-32 and other figures of the application. As may be seen there, the electrode is narrower than the clamping surface of the jaw on which it is carried and a portion of the jaw clamping surface is located on either side of the electrode. Also, in the illustrated embodiment, the electrodes are generally centrally located relative to the width of the respective clamping surface as specifically set forth in the newly added dependent claims 6 and 7.

Neither of the cited references discloses or suggests the claimed combination of features now set forth in the pending claims. The '281 Burnside patent does not show or suggest an electrode flanked by portions of the clamping surface of each respective jaw. Figures 78-81 of Burnside show a jaw having a series of wide, spaced-apart electrodes 294 that effectively form the full clamping width of the jaw on which they are mounted, in contrast to the narrower elongated electrodes set forth in the pending claims. Figure 88 of Burnside shows a wide electrode that extends along one side edge of the jaw. Burnside clearly does not describe or suggest an electrode/jaw arrangement in which each electrode is located on the respective jaw and flanked by portions of the jaw clamping surface (or with portions of the clamping surface on both sides of the electrode).

Unlike the present invention, the clamping device of Burnside is not employed for forming discreet lines of ablated cardiac tissue to establish non-conductive lines of ablation, as in a maze procedure. A fair reading of Burnside teaches that to form non-conductive lines of ablation one would use the elongated flexible probes that include flexible tubing and intermittent electrode, as seen for example in Figures 7-11, 13, 15-29 and 31-60 and other figures of Burnside. In contrast, the clamps of Burnside are described as being used for sealing together tissue such as the walls of the atrial appendage.

The Malecki '590 patent is, of course, directed to a basic clamp, and does not describe or teach the electrodes or electrode features or electrode/clamping surface arrangement set forth in the pending claims.


For the above reasons, it is respectfully submitted that pending claims, as now amended, are not described or suggested in the Burnside or Malecki patents, either alone or in combination.

A request for continuing examination is being filed with this response, and it is accordingly requested that these claims be reconsidered and allowed.

Respectfully submitted,

Date: March 10, 2004

By:


Gary W. McFarron, Esq.
Registration No. 27,357
Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 West Adams St., Suite 2850
Chicago, IL 60606
Telephone: (312) 236-8500

Attorneys for Applicant